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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 374

EDWARD J. SHAUGHNESSY, AS DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE DISTRICT OF NEW YORK, PETITIONER,

vs.

MAMPRIL SEQUEIRA PEDREIRO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FILED SEPTEMBER 28, 1954

CERTIORARI GRANTED NOVEMBER 15, 1954

SUPREME COURT OF THE UNITED STATES

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1-2 In United States District Court, Southern District of New York

In the Matter of the Petition for Review of
MAMPRIL SEQUEIRA PEDREIRO, Petitioner

vs.

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York, Respondent

To the District Court of the United States for the Southern District of New York:

PETITION—Filed March 15, 1954

The petitioner, MAMPRIL SEQUEIRA PEDREIRO, petitioning by his attorneys,, NEMEROFF, JELLINE, DANZIG & PALEY, respectfully alleges and shows to this Court as follows:

1. This action arises under the Immigration Laws of the United States. Jurisdiction is vested in this Court by the Act of June 27, 1952, 66 Stat. 230, 8 U.S. Code Sec. 1329, by the Act of June 27, 1952, 66 Stat. 208, 8 U.S. Code Sec. 1252, and alos by 60 Stat. 243, Act of June 11, 1946, 5 U.S. Code Section 1009.

2. The respondent is a duly appointed and acting District Director of Immigration for the District of New York, which is within the district of this court.

3. On December 4, 1951, a hearing was conducted at the office of the Immigration and Naturalization Service at New York City, New York, before a Hearing Officer of the Immigration and Naturalization Service to show cause why your petitioner should not be deported.

3 4. The evidence adduced at said hearing was in contravention of the Constitution of the United States and the Fifth Amendment in that your petitioner was deprived of due process of law and in that your petitioner was compelled to testify on matters which might tend to incriminate him such as his entry into the United States and his purposes in coming to the United States.

5. On or about December 4, 1951, the Hearing Officer rendered his decision and order in the matter. The order provided that petitioner be deported from the United States on the charges stated in the warrant of arrest.

6. That other than the evidence referred to in paragraph "4" hereof, no legal evidence of any nature which could form the basis of such a finding as stated in paragraph "5" hereof was adduced at said hearing.

7. That exceptions to the Hearing Officer's decision and order were duly filed with the District Director and on or about May 5, 1952, the Assistant Commissioner, Adjudication Division, adopted the order of the Hearing Officer that petitioner be deported from the United States on the charges stated in the warrant of arrest.

8. That the decision and order of the Hearing Officer, as adopted by the Assistant Commissioner, Adjudication Division, was illegal and erroneous in that there was no legal substantial evidence on the record as a whole, in that your petitioner was deprived of due process of law, and that your petitioner is in imminent danger of being deprived of liberty without due process of law.

9. That your petitioner duly filed notice of appeal to the Board of Immigration Appeals from the order and decision of the Hearing Officer adopted by the Assistant Commissioner, Adjudication Division and duly prosecuted his appeal.

4 10. That on or about June 24, 1953, the Board of Immigration Appeals ordered the appeal from the decision and order of the Hearing Officer, as adopted by Assistant Commissioner, Adjudications Division, be dismissed.

11. That on or about July 13, 1953, and February 4 1954, your petitioner made a motion to the Board of Immigration Appeals to re-open said hearings, which said motions were denied by the Board of Immigration Appeals on January 27th and February 4th, 1954, respectively.

12. That by virtue of said orders and decision of the Board of Immigration Appeals, the decision and order of the Hearing Officer, and adopted by the Assistant Commissioner, Adjudication Division, that petitioner be deported from the United States, pursuant to law on the charges stated in the warrant of arrest, became final.

13. The decision and order of the Board of Immigration Appeals was illegal and erroneous in that there was no legal substantial evidence on the record as a whole to support said decision and order, and your petitioner is in imminent danger of being deprived of liberty without due process of law.

14. That said order and decision of the Board of Immigration Appeals is a final determination that petitioner be deported, and petitioner has exhausted his administrative remedies.

Wherefore, petitioner prays that this Court

1. Review the order of the Board of Immigration Appeals.

2. Declare the order of the Hearing Officer, as adopted by the Assistant Commissioner, to be null and void.

3. Issue a temporary injunction staying execution of the aforesaid order of deportation pending final determination of the issues of this action by this court.

5-6 4. For such other and further relief as may be just and proper.

MAMPRIL SEQUEIRA PEDREIRO,
Petitioner.

Dated, New York, March 10, 1954.

MEMEROFF, JELLINE, DANZIG & PALEY,
By BERNARD KAUFMAN.

Duly sworn to by Mampril Sequeira Pedreiro, jurat, omitted in printing.

7-12 In United States District Court Southern District of New York

[Title omitted]

RESPONDENT'S NOTICE OF MOTION—Filed March 25, 1954

Sirs:

Please take notice that the undersigned will move this Court at a term for motions thereof, on the 30th day of March, 1954, in Room 506 of the United States Court House, Foley Square, Borough of Manhattan, City, State and Southern District of New York, at 10 A.M., or as soon thereafter as counsel can be heard, for an order dismissing the above entitled proceedings, pursuant to the provisions of Rule 12(b) of the Federal Rules of Civil Procedure, on the ground of lack of jurisdiction over the subject matter, on the further ground that there is a lack of an indispensable party in this proceeding, namely, the Commissioner of Immigration and Naturalization, and on the further ground that the petition fails to state a claim upon which relief can be granted.

Dated: March , 1954.

Yours, etc.

J. EDWARD LUMBARD,
United States Attorney for the Southern District of New York
Attorney for Respondent
Office & P. O. Address
United States Court House
Foley Square
Borough of Manhattan
City of New York.

To: NEMEROFF, JELLINE, DANZIG & PALEY, Esqs.
Attorneys for Petitioner,
350 Fifth Ave., New York, N.Y.

13 In United States District Court Southern District of New York

In the Matter of the Petition for Review of
MAMPRIL SEQUEIRA PEDREIRO, Petitioner

against

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York, Respondent.

Appearances:

Nemeroff, Jelline, Danzig & Paley, Esqs.,
Attorneys for Petitioner
350 Fifth Avenue
New York 1, N. Y.
Honorable J. Edward Lumbard
United States Attorney for the
Southern District of New York
Attorney for Respondent
Philip M. Drake, Esq.
Assistant United States Attorney
Of Counsel

OPINION—April 9, 1954

DIMOCK, D. J.

Pedreiro brings this action to review an order of the Board of Immigration Appeals, to declare null and void an order of a hearing officer adopted by the Assistant Commissioner, and to obtain a temporary injunction staying execution of an order of deportation pending final determination of the issues herein. He adds the usual prayer for other and further relief. He cites as authority for his procedure section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. Sec. 1009.

The District Director of Immigration and Naturalization for this District of New York who is the only adverse party named by Pedreiro makes this motion to dismiss on the ground that there is a lack of an indispensable party, namely, the Commissioner
14 of Immigration and Naturalization, and upon the further ground that habeas corpus is the exclusive means for reviewing deportation orders.

Taking up the question of non-joinder of parties let us see just what Pedreiro's situation is. He alleges that, after the issuance of a warrant of arrest, a deportation hearing was conducted on December 4, 1951, before a hearing officer of the Immigration and Naturalization Service at New York City; that the Hearing Officer, on December 4, 1951, rendered a decision and made an order directing that he be deported on the charges stated in the warrant

of arrest; that exceptions to the Hearing Officer's decision and order were duly filed, and on or about May 5, 1952, the Assistant Commissioner, Adjudication Division, adopted the order; that he appealed to the Board of Immigration Appeals but the Board, on or about June 24, 1953, ordered the appeal dismissed and that two subsequent motions to the Board to reopen the hearings were made and denied.

The charges in the warrant of arrest are not stated.

Without further specification, the order of deportation is attacked on the ground that the "evidence adduced at said hearing was in contravention of the Constitution of the United States and the Fifth Amendment in that" he "was deprived of due process of law and in that" he "was compelled to testify on matters which might tend to incriminate him such as his entry into the United States and his purposes in coming to the United States".

It was held in Vaz v. Shaughnessy, D.C.S.D.N.Y., 117 F. Supp. 778, aff'd., 2 Cir. 208 F 2d 70, that the Commissioner of Immigration and Naturalization and/or the Attorney General were indispensable parties to a proceeding brought under section 10 of the Administrative Procedure Act for (1) a declaratory judgment that the applicant was eligible for suspension of deportation, (2) an injunction against the District Director of Immigration and Naturalization and (3) a direction that the District Director reopen the deportation hearing for the purpose of permitting an application for suspension of deportation. In that case the alien's application had been considered and denied by a hearing officer, the Assistant Commissioner of Immigration and Naturalization and the Board of Immigration Appeals. It was there held that, to grant the relief sought and to effectively dispose of the controversy, the court would have to have jurisdiction over the superior officer. It was said that the court there could not, without the presence of the superior officer, grant all the relief that the plaintiff sought. Indeed no effective relief could have been given. The only effective relief would be that which would protect the alien in other Districts and that could not be obtained without getting jurisdiction over the superior officer.

In a proceeding to review a deportation order like the one at bar it is still clearer that the superior officer is a necessary party. Indeed before the Vaz case there were many which held that the Commissioner of Immigration and Naturalization was an indispensable party in actions to review orders of deportation. Paolo v. Garfinkel, . Cir., 200 F 2d 280. Slavik v. Miller, 3 Cir., 184 F. 2d 575, cert. denied 340 U.S. 955. Pokovinnikoff v. Miller, 3 Cir., 179 F. 2d 937. Medalina v. Shaughnessy, D.C.S.D.N.Y., 102 F. Supp. 950. Birns v. Commissioner of Immigration and Naturalization, D.C.N.D. Ohio, 103 F Supp 180. See Connor v. Miller, 2 Cir., 178 F 2d 755.

Here, however, Pedreiro says that his case is different; that he proceeds on constitutional ground and that the District Director proposes to deport him without warrant in law. Under those circumstances, he says, he need not join any one else in his suit to prevent that deportation. It may be true that Pedreiro has
16 a remedy against the District Director all alone but if so that remedy is habeas corpus. If he persists in proceeding under the Administrative Procedure Act he presents a case no more favorable for elimination of superior officers than the Vaz case. The relief he seeks includes a review of the action of the Board of Immigration Appeals. A direct review of that action is impossible without the presence of the Attorney General or the Commissioner of Immigration and Naturalization. Even if Pedreiro would be satisfied to let the order of the Board stand and rely on a declaration that it was invalid as between him and the District Director, that declaration would be ineffective against the superior officers. Marshall v. Crotty, 1 Cir., 185 F 2d 622, 627-628. The only effective relief would be that which would protect him in other Districts and that could not be obtained without getting jurisdiction over the superior officers. Even if the determination were that the order was not merely improper but indeed unconstitutional and utterly void, that determination would impart to the order no magic through which its sentence could reach out and bind persons who were not before the court.

All of the foregoing discussion has proceeded upon the assumption that the remedy chosen by Pedreiro is available for review of deportation orders. Since I conclude that, even if it is available for that purpose, it must be denied for lack of a necessary party, I can, as did the Court of Appeals in the Vaz case, dispose of the matter without passing on the question whether the remedy is available. It is noteworthy, however, that since the Court of Appeals decision in the Vaz case, the United States Supreme Court has, by an evenly divided court, affirmed a decision of the District of Columbia Court of Appeals holding that the Nationality Act of 1952 makes the remedy under the Administrative Procedure Act available in deportation order cases. Rubinstein v. Brownell, 206 F. 2d 449, aff'd sub nom. Brownell v. Rubinstein, 346 U.S. 929.

17-18 Since the instant case must be dismissed, Pedreiro's motions for a stay and for enlargement on bond fall with the dismissal and are denied without further consideration.

Dated: April 8, 1954.

E. J. DIMOCK,
United States District Court.

19-20 In United States District Court, Southern District of New York

In the Matter of the Petition for Review of
MAMPRIL SEQUEIRA PEDREIRO Petitioner

against

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York, Respondent

JUDGMENT—April 23, 1954

The respondent's motion for an order dismissing the above entitled action on the ground that there is a lack of an indispensable party in this proceeding having been noticed for hearing and heard on March 30, 1954. The plaintiff appearing by M. Silfen, Esq., and the respondent appearing by J. Edward Lumbard, United States Attorney for the Southern District of New York (by Philip M. Drake, Assistant United States Attorney) and the Court having rendered its written opinion, filed on April 9, 1954, it is

Ordered that the said motion be and the same is hereby granted in all respects, together with costs as taxed in the sum of $20.00, and that the respondent have judgment against Mampril Sequeira Pedreiro herein.

Dated: New York, N. Y., April 23rd, 1954.

E. J. DIMOCK, U.S.D.J.

Judgment Entered April 26, 1954.

WILLIAM T. CONNELL, Clerk, U.S. District Court

21 Clerk's Certificate to foregoing transcript omitted "in printing.

22 In United States Court of Appeals
For the Second Circuit

No. 276—October Term, 1953

Docket No. 23091

In the Matter of the Petition for Review of
MAMPRIL SEQUEIRA PEDREIRO, Petitioner-Appellant

against

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York, Respondent-Appellee

OPINION—July 1, 1954

Before CLARK, FRANK and MEDINA, *Circuit Judges*.

Petitioner appeals from an order dismissing the case for lack of an indispensable party. Dimock, *D. J.* Reversed.

NEMEROFF, JELLINE, DANZIG & PALEY, *Attorneys for Petitioner-Appellant*; Aaron L. Danzig, of Counsel.

J. EDWARD LUMBARD, United States Attorney for the Southern District of New York, *Attorney for Respondent-Appellee*; Philip M. Drake and Lester Friedman, of Counsel.

23 MEDINA, *Circuit Judge*:

This is an action by a deportee for a declaratory judgment and injunctive relief under the Administrative Procedure Act, Section 10, 60 Stat. 243, 5 U.S.C. Sec. 1009. Petitioner having exhausted his administrative remedies seeks a review of the proceedings resulting in a final order of deportation, claiming that his constitutional rights have been violated in that "the evidence adduced * * * was in contravention of * * * the Fifth Amendment in that your petitioner was deprived of due process of law and in that your petitioner was compelled to testify on matters which might tend to incriminate him, such as his entry into the United States and his purposes in coming to the United States."

The merits have not been considered, the court below having dismissed the case on motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, as the action was brought against the District Director of Immigration and Naturalization for the District of New York, without joining either the Attorney General or the Commissioner of Immigration and Naturalization.

To those who have spent the greater part of their professional lives manipulating procedural devices in the ebb and flow of practice at the bar it sometimes seems that in the very areas of the law where

simplicity and flexibility of procedure are most indispensable are found a morass of complexities. This case provides an illustration.

The aliens involved in deportation proceedings are often in poor financial circumstances; the validity of final orders of deportation generally, if not always, depends upon questions relating to the alleged infringement of the deportees' constitutional rights; their imprisonment or enlargement on bail and the actual deportation itself affect human relationships of the highest consequence.
24 Under these circumstances it would seem that the courts must be able to spell out some simple formula which will cut through red tape, face realities, and provide an expeditious and inexpensive remedy, with a minimum amount of procedural frills and a maximum amount of attention to the question of whether or not the administrative proceedings against the deportee have conformed to the requirements of due process.

And yet a careful perusal of the numerous decided cases referred to in Judge Dimock's scholarly and reasoned opinion, and certain other authorities cited in the briefs submitted by counsel for the parties, discloses refinement and conflicting views which make it a difficult task to find and apply controlling principles. The traditional remedy of habeas corpus as a means of reviewing the validity of an order of deportation is plainly inapplicable, as petitioner is not in custody, and one cannot blame him for unwillingness to gamble with his liberty which may not readily be regained. While counsel for respondent contend that the question is still open, whether or not a civil action for a declaratory judgment and injunctive relief under the Administrative Procedure Act, Section 10, *supra*, provides an alternative method for testing the validity of a deportation order, we shall follow *Rubinstein* v. *Brownell*, 206 F. 2d 449 (C.A.D.C., 1953), affirmed sub nom. *Brownell* v. *Rubinstein*, 346 U.S. 929 (1954). See *contra*, *Batista* v. *Nicolls*, ——F. 2d ——, decided by the Court of Appeals for the First Circuit on May 19, 1954.

Many decisions support the view that the Attorney General, or the Commissioner of Immigration and Naturalization is an in-
25 dispensable party,[1] but the holding by this Court in *Vaz* v. *Shaughnessy* 28 F. 2d 70 (C. A. 2, 1953), seems distinguisha-

[1] *Podovinnikoff* v. *Miller*, 179 F. 2d 937 (C.A. 3, 1950); *Slavik* v *Miller*, 184 F. 2d 575 (C.A. 3, 1950), certiorari denied, 340 U.S. 955 (1951); *Paolo* v. *Garfinkel*, 200 F. 2d 280 (C.A. 3, 1952); *Belizaro* v. *Zimmerman*, 200 F. 2d 282 (C.A. 3, 1952); *Rodriquez* v. *Landon*, 112 F. 2d 508 (C.A. 9, 1954); *Medalha* v. *Shaughnessy*, 102 F. Supp. 950 (D.C.S.D.N.Y., 1954); *Bieus* v. *Commissioner*, 103 F. Supp. 180 (D.C.N.D. Ohio, E.D. 1952); *Corona* v. *Landon*, 111 F. Supp. 191 (D.C.S.D. Cal., C. D, 1953).

ble, as the *Vaz* case involved an attempt by a concededly deportable alien to review an order holding him not eligible for suspension of deportation, essentially a discretionary matter, whereas here petitioner seeks a review of the record on which is based a final order of deportation, on the ground that his constitutional rights have been infringed. The District Director, moreover, especially under the new regulations promulgated on December 17, 1952,[2] plainly is the person to whom has been delegated the power to issue the warrant of deportation and determine the various questions incidental thereto.

The rationale of the cases holding the Commissioner of Immigration and Naturalization or the Attorney General to be an indispensable party in such cases as this boils down to the assertion that the deportee might move to another district and be taken into custody by the District Director there, and the injunction
26 granted in the pending suit would not bar deportation from such other district. In this sense the remedy would be incomplete and there would be no guaranty against circuity of action and delay.

Viewed realistically, however, and with due respect to our brethren of the Third Circuit and others, we think these considerations lack substance. The likelihood of removal to another district seems remote, especially as the principal reason for these numerous proceedings against District Directors, disclosed by the reported cases above referred to, appears to be that the joinder of the Commissioner of Immigration and Naturalization or the Attorney General, whose actual and official residences are in the District of Columbia,

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[2] These regulations were made effective after the date of the filing of the complaint in the *Vaz* case, *supra*, and read as follows:

"Part 243—Deportation of Aliens in the United States.

Sec. 243.1. Issuance of warrants of deportation; country to which alien shall be deported; cost of detention; care and attention of alien—(a) Issuance. In any case in which an order of deportation becomes final a warrant of deportation shall be issued. District directors shall issue warrants of deportation.

(b) Determination of place and cost of deportation and necessity for attendants. District directors shall exercise the authority contained in section 243 of the Immigration and Nationality Act to designate the country to which, and at whose expense an alien in the United States shall be deported, and to determine when an alien's mental or physical condition requires the employment of a person to accompany the alien.

Sec. 243.2. Finality of decision. No appeal shall lie from the decision of the district director in the exercise of the authority described in Sec. 243.1."

would require the venue to be laid in Washington and involve expense which the deportee may be and often is unable to defray. See dictum of Picard, *J.*, in *Rogers* v. *Battlefield*, 115 F. Supp. 953 (D.C.E.D. Mich., 1953). Doubtless the defense would be conducted by the same or equally competent counsel; the same review of the record by appellate courts would be available; and such further proceedings as might be directed to be had would follow in due course. To require the joinder of the Commissioner of Immigration and Naturalization or the Attorney General under these circumstances would, we think, sacrifice substance to mere form and serve no other purpose than perhaps to deny all relief short of habeas corpus to an indigent alien deportee, whose constitutional rights are just as sacred in the eyes of the law as those of a citizen.

If it shall ultimately be found that petitioner is entitled to injunctive relief against the District Director, we believe such relief, even if not as comprehensive as it could be if the Attorney General had been joined, will not only furnish the protection which petitioner solicits and which will afford him adequate protection, but will follow traditional lines, as our courts have always been
27 zealous to prevent public officials from restraining or threatening to restrain the liberty of citizens and aliens alike, in violation of their constitutional rights. This result seems to us to be in harmony with the reasoning of *Williams* v. *Fanning*, 332 U.S. 490 (1947).

The case is remanded to the District Court for further proceedings in accord with this opinion, including consideration of the motions referred to in the opinion below.

Reversed.

28 In United States Court of Appeals for the Second Circuit

HON. CHARLES E. CLARK, HON. JEROME N. FRANK, HON. HAROLD R. MEDINA, *Circuit Judges*.

MAMFRIL SEQUEIRA PEDREIRO, Petitioner-Appellant

v.

EDWARD J. SHAUGHNESSY, District Director of Immigration & Naturalization, Respondent-Appellee

JUDGMENT—July 1, 1954

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged,

and decreed that the order of said District Court be and it hereby is reversed and action remanded for further proceedings in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) A. DANIEL FUSARO, Clerk.

29 [File endorsement omitted.]

30 Clerk's Certificate to foregoing transcript omitted in printing.

31 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 374

EDWARD J. SHAUGHNESSY, as District Director of Immigration and Naturalization for the District of New York, Petitioner

vs.

MAMFRIL SEQUEIRA PEDREIRO

ORDER ALLOWING CERTIORARI—Filed November 15, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1955 216655